

EXPEDITED CLAIM PILOT PROJECT IMPLEMENTATION PLAN

The State Water Resources Control Board (State Water Board) formed the Expedited Claim Account Program (ECAP Program) to implement section 25299.50.7 of the California Health and Safety Code,¹ which was added to the statutes by the enactment of Senate Bill No. 445 (SB 445) (Stats. 2014, ch. 547, § 10). One objective of SB 445 was to establish the Expedited Claim Pilot Project (Pilot Project) to investigate potential methods to reduce the overall cost of petroleum underground storage tank (UST) site cleanup and reduce the time to reach UST case closure by increasing coordination between the claimant, consultant, regulator, and the UST Cleanup Fund (Fund) staff. This Expedited Claim Pilot Project Implementation Plan (Implementation Plan) defines these parties collectively as the Joint Execution Team (JET) for the case. The Implementation Plan requires that the JET develop a Project Execution Plan (PEP) which includes the data objectives, time-bound milestones, and a general approach of undertaking the site cleanup project to meet case closure criteria. The coordination among members of the JET and the development and implementation of the PEP is described in this Implementation Plan as the ECAP Program Process. This Implementation Plan provides the background of the Pilot Project, identifies criteria for the selection of claims to participate in the Pilot Project, and describes procedures for implementation of the Pilot Project.

The results of the Pilot Project will be documented in the Expedited Claim Pilot Project Report (Report) due January 1, 2018, as required by section 25299.50.7. The Report will document and evaluate the effectiveness and efficiency of the Pilot Project in expediting the funding of claims and completions of site cleanups. The State Water Board, in consultation with stakeholders, will work to develop metrics to forecast long-term demand on the Fund and will include this information in the report. This Report shall be posted on the State Water Board's Internet website, and updated periodically.

BACKGROUND

On May 1, 2012, the State Water Board issued [Resolution No. 2012-0016](#) which adopted the Low-Threat Underground Storage Tank Case Closure Policy (Closure Policy). The Closure Policy is a state policy for water quality control and applies to all petroleum UST sites subject to chapter 6.7 of division 20 of the Health and Safety Code. The Closure Policy sets general and media-specific criteria, which, if satisfied, identify a petroleum UST cleanup site that poses a low threat to human health, safety, and the environment, and, therefore, is eligible for case closure. Resolution 2012-0016 includes a directive to the Regional Water Quality Control Boards (Regional Water Board) and Local Oversight Program (LOP) agencies (collectively, regulatory agencies), to review all cases in the petroleum UST Cleanup Program using the framework provided in the Closure Policy.

On November 6, 2012, the State Water Board adopted Resolution 2012-0062 which approved the *Plan for Implementation of Low-Threat Underground Storage Tank Case Closure Policy and Additional Program Improvements* (LTCP Plan). The LTCP Plan directed a number of actions by the State Water Board, Regional Water Boards, and LOP agencies, including aggressively implementing the LTCP Plan. In addition to program improvements and other oversight responsibilities, [Resolution No. 2012-0062](#) also directs State Water Board staff to review a regulatory agency's decision when the regulatory agency has denied a request for case closure pursuant to the Closure Policy, and for State Water Board staff to propose case closure if appropriate. Section 25299.39.2 requires the UST Cleanup Fund Manager (Fund Manager) to annually review certain UST cases to determine whether case closure is appropriate, and, as appropriate, to recommend case closure to the State Water Board.

¹ All statutory references are to the California Health and Safety Code unless otherwise noted.

As a result, State Water Board staff expanded communication and collaboration with regulatory agency staff, claimants and their consultants. State Water Board staff started providing ongoing training on the use of the Closure Policy, LTCP Plan, and GeoTracker at quarterly UST Program Roundtables and during individual case closure reviews. The case closure review process includes discussions between State Water Board staff and regulatory agency staff regarding Closure Policy criteria and case-specific conditions to determine whether closure under the Closure Policy is appropriate, or whether additional investigative or remedial actions are required.

However, by 2014, State Water Board staff had received feedback from Regional Water Boards, LOP agencies, claimants and consultants regarding inconsistencies in the interpretation of the Closure Policy and the actions necessary to meet the criteria of the Closure Policy. For example, some regulatory agencies directed more work than was required by the Closure Policy, and others used inappropriate criteria instead of Closure Policy criteria. Within a single agency, case workers required different levels of investigation or cleanup for sites with similar environmental conditions. In some cases, cleanup funds were spent on unnecessary tasks or remediation methods inappropriate for site-specific conditions. As a result, some claimants spent more than their maximum claim reimbursement before their site met closure criteria so they incurred a potentially avoidable financial burden. In addition, claimants noted that they performed work directed by regulatory agencies and sometimes Fund staff denied these costs as unnecessary. It is anticipated that increased stakeholder communication and a more structured case and claim review process will address these issues and will significantly reduce the cost and time to reach case closure under the Closure Policy.

In 2015, State Water Board staff began meeting with stakeholders to determine how to apply section 25299.50.7 and create the Pilot Project. Stakeholders participated in the planning and development of the Pilot Project through most of 2015.

Specific actions required of the State Water Board under section 25299.50.7

1. Transfer \$100 million dollars from the Fund to the new Expedited Claim Account to reimburse eligible corrective action costs of claims for sites selected to be part of the Pilot Project. The maximum reimbursement amount available for claims selected to participate in the Pilot Project will be the same as for all claims.
2. With stakeholder input, establish the Pilot Project to:
 - a. Reduce the overall cost for site cleanup; and
 - b. Reduce the time to reach closure.
3. With stakeholder input, investigate potential methods to reduce the overall cost for site cleanup and the time to reach closure including, but not limited to:
 - a. Establish multi-year funding for claims;
 - b. Increase collaboration among Fund staff, regulatory agency staff, and claimants and their consultants;
 - c. Establish project milestones, cost estimates, and reimbursement submission schedules.
4. Develop criteria for the selection of claims to participate in the Pilot Project. At a minimum, the State Water Board shall:

- a. Consider the threat to human health, safety, or the environment caused by contamination at the site that is the subject of the claim;
 - b. Consider the priority ranking assigned to the claim pursuant to section 25299.52, and
 - c. Consider the progress of cleanup at the site that is the subject of the claim.
5. Solicit Fund claims from all priority rankings for participation in the Pilot Project to implement potential improvement methods. The State Water Board shall select a limited number of claims to participate in the Pilot Project.
6. Include the following in the UST Cleanup Fund Fiscal Year 2017/2018 Annual Report and subsequent Annual Reports:²
 - a. Information on the expenditure of funds transferred to the ECAP Program;
 - b. Amount of reimbursements requested by claimants participating in the Pilot Project; and
 - c. Amount of reimbursements paid to claimants in the Pilot Project.
7. On or before January 1, 2018, prepare and post on the State Water Board's website a Pilot Project Report analyzing:
 - a. The effectiveness and efficiency of the Pilot Project in expediting the funding of claims;
 - b. The effectiveness and efficiency of the Pilot Project in expediting the completion of site cleanups; and
 - c. Projections of the long-term demand on the Fund, as forecast by metrics developed by the State Water Board in consultation with stakeholders.
8. Periodically, with stakeholder input, update the Pilot Project Report and post it on the State Water Board's Internet website.

PLAN COMPONENTS

The following are components of the Implementation Plan:

- I. Criteria for Participation in the Pilot Project
- II. The ECAP Program Process
- III. JET Roles and Responsibilities
- IV. Project Execution Plans
- V. Reporting

I. Criteria for Participation in the Pilot Project

The Legislature provided that, at a minimum, the State Water Board must consider the following three criteria when selecting claims to participate in the Pilot Project:

1. The priority ranking assigned to the claim pursuant to section 25299.52,
2. The threat to human health, safety, or the environment caused by contamination at the site that is the subject of the claim, and
3. The progress of cleanup at the site that is the subject of the claim.

² Section 25299.81, subdivision (d) requires the State Water Board to continuously or annually post and update on the State Water Board website information that describes the status of the UST Cleanup Fund and make recommendations to improve the efficiency of the UST Cleanup Fund program. Section 25299.50.7, subdivision (e) requires information regarding the Expedited Claim Account to be included in the UST Cleanup Fund Annual Report prepared pursuant to section 25299.81.

Section 25299.50.7 requires the State Water Board to solicit Fund claims from all priority rankings for participation in the Pilot Project to implement potential improvement methods. The State Water Board shall select a limited number of claims to participate in the project. The priority ranking is proposed Criterion 1.

To obtain participation in the Pilot Project that is reflective of the Fund as a whole, State Water Board staff proposed to select a limited number of claims with a distribution of priority rankings that is similar to the distribution of priority rankings in the UST Cleanup Fund as a whole. The distribution information was used to identify the level of focused solicitation efforts required to obtain a representative selection of participants. Table 1 lists the priority ranking distribution of UST Cleanup Fund participants and the proposed participation goals for the Pilot Project.

Table 1 Criterion 1 Priority Ranking Distribution of Cleanup Fund Participants¹ and Pilot Project Goals		
Priority Class	UST Cleanup Fund Percentage	Pilot Project Participation Goal
A	1.0%	1%
B	55.1%	55%
C	33%	33%
D	10.9%	11%
Total	100%	

¹Data as of November 2015

Section 25299.50.7 also required that the State Water Board develop criteria for the selection of claims to participate in the Pilot Project. In addition to the priority ranking discussed above, the criteria shall, at a minimum, include consideration of:

- The threat to human health, safety, or the environment caused by contamination at the site that is the subject of the claim, and
- The progress of cleanup at the site that is the subject of the claim.

State Water Board staff designated the threat to human health, safety or the environment as proposed Criterion 2, and the progress of cleanup as proposed Criterion 3, with subcategories as listed below:

Table 2 Criteria 2 and 3 Threat- and Progress-based Criteria		
Criterion	Subcategory	Subcategory Description
Criterion 2	Group 1	Cases that may have affected supply wells
	Group 2	Cases that may have vapor intrusion risk
Criterion 3	Group 3	Cases that have been reimbursed >\$750,000
	Group 4	Cases that have been in the same work phase (i.e., assessment, remediation) for more than 3 years.
	Group 5	Cases open less than 3 years (LOC issued)

State Water Board staff made a presentation to the Management Coordinating Committee to brief the Executive Officers of each Regional Water Board regarding the scope and goals of the Pilot Project. The Pilot Project was presented to regulatory staff through a series of Roundtable communications. State Water Board staff used its internal database of Fund sites to identify sites and generate a spreadsheet of sites that met proposed Criteria 1 through 3. The spreadsheet was divided by region and each Regional Water Board and LOP agency was asked to identify 10 sites that would most benefit by participation in the Pilot Project. After the sites were identified, State Water Board staff issued invitations to participate in the Pilot Project to the claimants of the selected sites. Since the response to the invitation to participate in the Pilot Project did not generate an adequate number of sites for the Pilot Project, additional invitations were sent. Following the second solicitation, additional claims were included in the Pilot Project. In addition, claimants volunteered to participate in the Pilot Project and were included if they met the criteria. Claimants continue to request to participate and there are currently 112 claims included in the Pilot Project.

II. ECAP Program Process

For each claim in the Pilot Project, a team consisting of ECAP Program staff, regulatory agency staff, the claimant and their consultant (the Joint Execution Team or JET) was or will be established. JET meetings will occur, at a minimum, twice a year, or more often if necessary, to evaluate and update the Project Execution Plan (PEP). JET meetings may be accomplished via teleconference, WebEx/GlobalMeet, face-to-face, or other cost-effective means as agreed upon by the JET. To date, JETs have been formed for 65 of the 112 claims.

The JET will review site history and current conditions and agree on the Closure Policy criteria that have been met and those that have not been met. The JET will identify project objectives and data gaps, and agree upon a general approach and schedule for the project to achieve case closure. The JET will document the case closure criteria to be met, agree upon the investigative and/or corrective action tasks to be performed to meet specific Closure Policy criteria, establish task schedules, and cost estimates. These items will be documented in the PEP for the claim. The PEP is a dynamic multi-year document that will summarize the lifecycle of the project.

The goal of the JET meetings is to increase communication and collaboration among its members. An example of an ideal outcome of a JET meeting would be as follows:

- a. The JET decides that the groundwater criteria are the only Closure Policy criteria not met and that off-site groundwater grab sampling should be performed to delineate the extent of the benzene plume.
- b. The regulatory agency prepares a directive letter requiring off-site delineation of the benzene plume.
- c. The consultant, on behalf of the claimant, submits a PEP with the estimated costs for the proposed scope of work.
- d. ECAP Program staff distribute the PEP to the JET to obtain agreement; once agreed upon, the estimated amount in the PEP becomes the annual budget for the claim.
- e. The consultant performs the work within budget and the results are uploaded to GeoTracker.
- f. The claimant submits reimbursement request to and is reimbursed for the cost of the work by the Fund.

The coordination of the JET and development and implementation of the PEP is defined in this Plan as the ECAP Program Process. The ECAP Program Process is expected to greatly reduce the overall cost to close cases, time until case closure, and submittal of ineligible costs to the Fund.

III. JET Roles and Responsibilities

Table 3, below, articulates the roles and responsibilities of all staff that contribute to the JET, including supervisory staff that may have only a background role for a particular UST case. In most cases, a JET will include the ECAP staff assigned to the Fund claim, regulatory agency staff assigned to the UST case, the claimant, and the claimant's consultant. Supervisory staff from the Fund or a regulatory agency may choose participate in JET meetings, but are not required.

The most productive outcomes will occur if each member of the JET has a reasonable working knowledge and understanding of UST Cleanup and Fund Regulations, the Fund reimbursement process, the Leaking Underground Fuel Tank (LUFT) Guidance Manual, the Closure Policy, the State Water Board Resolutions cited in this Plan, and the Water Quality Objectives (WQOs) adopted in the Regional Water Board Basin Plans where the site is located. These documents and the site-specific information in GeoTracker provide the framework that will be used to develop the PEP for the site. Relevant site documents, such as directives, reports and pertinent data, are to be uploaded to GeoTracker, including documents prepared prior to 2005 when GeoTracker uploading became mandatory.

Table 3	
ECAP Program Roles and Responsibilities	
ECAP Program Representatives	
<u>Title:</u>	ECAP Program Section Manager
<u>Role:</u>	Leads the development of the Expedited Claim Pilot Project and resolves ECAP Program process issues as needed.
<u>Responsibility:</u> The ECAP Program Section Manager applies the statute establishing the Pilot Project, develops the Pilot Project participation criteria, oversees the implementation of the Pilot Project, reviews the progress of the Pilot Project, finalizes the content of the Pilot Project Report, and communicates the status of the Pilot Project to the Fund Manager and stakeholders.	
<u>Title:</u>	
<u>Title:</u>	ECAP Program Unit Supervisor
<u>Role:</u>	Oversees the implementation of the ECAP Program process, supervises the ECAP Program staff, and evaluates the Pilot Project.
<u>Responsibility:</u> The ECAP Program Unit Supervisor ensures consistency applying the Closure Policy and applying the ECAP Program Process. The Unit Supervisor reviews Review Summary Reports (RSRs), meeting agendas, and meeting summaries. The Unit Supervisor oversees staff decisions regarding reasonable and necessary activities and the path to closure. As necessary during meetings, the Unit Supervisor collaborates with the Agency Unit Lead to determine Closure Policy criteria met. The Unit Supervisor coordinates with other units of the Fund as they interact with ECAP Program. The Unit Supervisor develops and tracks metrics for the Pilot Project Report and updates the status within the Pilot Project Report and the ECAP Program website.	

Title:	ECAP Program Staff
Role:	Facilitates communication, provides fiscal and technical advice, reviews reimbursement requests
<p>Responsibility: The ECAP Program staff is the primary point of communication to the JET. Using available data in GeoTracker, ECAP Program staff prepares a draft RSR, which identifies Closure Policy criteria not met, and sends the draft RSR to the Regulatory Agency staff for review. ECAP Program staff arranges a conference call with the Regulatory Agency staff to discuss and agree upon Closure Policy criteria met and not met. To address each criterion that is not met, the need for a cost-efficient, necessary, and reasonable investigative and/or corrective action is identified, agreed upon, and documented. ECAP Program staff finalizes and posts the RSR to GeoTracker. ECAP Program staff arranges a conference call with the Joint Execution Team (JET) to discuss Closure Policy criteria not met and the need for action to address the criteria. During the JET meetings, the claimant, with their consultant, propose a scope of work to specifically address the criteria and receive direct input from the ECAP Program staff and Regulatory Agency staff. At the end of each meeting, ECAP Program staff provides a verbal summary of action items and due dates. ECAP Program staff document each meeting and distribute the notes among the JET for comments and finalization. ECAP Program staff request and receive a Project Execution Plan (PEP) document from the consultant, review the proposed activities and costs, distribute the PEP among the JET for comment, and submit a final PEP to the payment unit to become the claim's fiscal year budget. ECAP Program staff review budget change requests and reimbursement requests and compare the scope of work and costs to the PEP.</p>	
Regulatory Agency Representatives	
Title:	Lead Agency Program Manager
Role:	Oversees agency staff management of cases participating in the Pilot Project.
<p>Responsibility: The Program Manager works with the ECAP Program Section Manager to resolve ECAP Program process issues as needed, assists with development of ECAP Program participation criteria, and selects cases to recommend for participation in the Pilot Project.</p>	
Title:	Lead Agency Supervisor
Role:	Supervises work performed by agency caseworkers for ECAP Program claims and provides an elevated determination of Closure Policy criteria.
<p>Responsibility: The Lead Agency Supervisor coordinates with the ECAP Program Unit Supervisor to effectively evaluate site conditions against Closure Policy criteria and ensures application of consistent interpretations of the Closure Policy. The Lead Agency Supervisor provides a determination of the consultant's proposed work and ensures that the caseworker is directing activities consistent with closure goals. The Lead Agency Supervisor ensures that the Agency staff update the LTCP checklist and Path to Closure Plan following JET meetings.</p>	

Title:	Regulatory Agency Staff
Role:	The lead agency caseworker oversees work performed by claimant and consultant, issues directives, tracks case progress, and evaluates conditions for closure under the Closure Policy criteria.
Responsibility: The caseworker participates in meetings with the ECAP Program staff to determine Closure Policy criteria not met and provides JET members historic and current information on agency directives and case status. Based on the JET meeting conclusions, Agency staff issue directives to the claimant and review work plans, remediation system designs, remediation system performance reports, monitoring reports, and all other correspondences. The Agency staff communicate with claimants and consultants and prepare document review response letters. The Regulatory Agency staff update the LTCP checklist and Path to Closure Plan in GeoTracker following JET meetings and completed PEP corrective action tasks.	
Claimant and Consultant	
Title:	Claimant
Role:	The claimant is the current or former UST owner or operator that has filed a claim against the Fund and is required to undertake corrective action as directed by the Regulatory Agency.
Responsibility: The claimant is responsible for taking corrective action in response to an unauthorized release. Corrective action, which is defined in section 25299.14, includes, but is not limited to, abatement, preliminary site assessment, investigation, remediation, and monitoring. The claimant may contract a consultant to perform tasks associated with the investigation and remediation of a leaking UST. The claimant must have a working knowledge of the Closure Policy and the Fund reimbursement process. The claimant approves the consultant to do work on the claimant's behalf and pays the consultant for costs incurred. The claimant provides site access needed to conduct corrective action tasks. The claimant reviews and signs reimbursement requests prior to submittal to the Fund staff and submits all reimbursement requests within 365 days of case closure. Claimant submits all Fund documents electronically using GeoTracker, including reimbursement requests using Online Invoicing. Claimant has sufficient resources to participate in JET meetings, ability to teleconference, and sufficient computer resources to use GeoTracker and prepare and share the PEP and JET-related documents and communications.	
Title:	Consultant
Role:	A licensed professional geologist or civil engineer, hired by the claimant to provide professional expertise and perform tasks associated with the investigation and remediation of a UST site within the Fund.
Responsibility: The consultant provides JET members with site-specific information and history as it relates to past and proposed work. The consultant uses professional expertise to determine and justify the most appropriate investigative and remedial options for the site. The consultant conducts corrective action tasks discussed in JET meetings, properly documents results of investigations and corrective actions, and uploads documents to GeoTracker. The consultant prepares cost estimates and schedules for the PEP. The consultant minimizes delays for implementing corrective actions and notifies the JET when steps to resolve unsatisfied Closure Policy criteria have fallen behind established goals and timelines. The consultant notifies the JET prior to requesting a change to established corrective actions completion dates. The consultant submits timely and accurate reimbursement requests on behalf of the claimant. The consultant has sufficient resources to participate in JET meetings, ability to teleconference, and sufficient computer resources to use GeoTracker and prepare and share the PEP and JET-related documents and communications.	

IV. Project Execution Plans

For each selected claim, the JET will develop and follow a dynamic PEP for the UST project. The PEP will list the following: closure criteria that have not been met, data objectives, time-bound milestones, a general approach of undertaking the project, identify the tasks necessary to meet the Closure Policy criteria, rationale why each task will meet closure criteria, schedule for tasks, estimated cost for each task needed to meet case closure criteria and close the case, and reimbursement request schedule. At a minimum, PEPs will include the items listed in Table 4 below:

TABLE 4 PEP COMPONENTS	
COMPONENT	JET Lead/Assist
1. Site Description	ECAP Program Unit staff
2. Aerial Photo of Site	ECAP Program Unit staff
3. Site Layout Map	ECAP Program Unit staff
4. Review Summary Report – most recent	ECAP Program Unit staff
a. CSM Summary Report generated from GeoTracker – most recent	ECAP Program Unit staff/Consultant
b. Groundwater Monitoring Summary	ECAP Program Unit staff/Consultant
c. Summary of Corrective Actions	ECAP Program Unit staff/Consultant
5. Remedial System Components and most recent Remediation data	Consultant
a. Analysis of Remediation System Effectiveness	Consultant/JET
6. Low-Threat Closure Checklist – most recent	Regulatory Agency Unit Lead
7. Path to Closure Plan – most recent prior to PEP and updated following PEP discussion	Regulatory Agency Unit Lead
8. Planned Corrective Actions – page in PEP spreadsheet	ECAP Program Unit Supervisor
9. Schedule (to Closure) – page in PEP spreadsheet	ECAP Program Unit Supervisor
10. Cost Estimate (to Closure) – page in PEP spreadsheet	ECAP Program Unit Supervisor

V. Reporting

As required by section 25299.50.7, on January 1, 2018, the Pilot Project Report will be posted to the State Water Board UST Cleanup Fund website. The Pilot Project Report will analyze the effectiveness and efficiency of the Pilot Project in expediting the funding of claims and completions of site cleanups. It also will include information concerning the collaborative work of the State Water Board and stakeholders to develop metrics to forecast long-term demand on the Fund. The Pilot Project Report will be updated periodically.

Also, pursuant to section 25299.50.7, the UST Cleanup Fund Fiscal Year 2017/2018 Annual Report, and subsequent Annual Reports, will include the following:

- a. Information on the expenditure of funds transferred to the Expedited Claim Account;
- b. Amount of reimbursements requested by claimants participating in the Pilot Project; and
- c. Amount of reimbursements paid to claimants in the Pilot Project.

CONCLUSION

This Implementation Plan has been prepared in accordance with section 25299.50.7. The purpose of the Implementation Plan is to guide implementation of the Pilot Project to investigate potential methods to reduce the overall cost of UST site cleanup and reduce the time to reach UST case closure by increasing coordination between the claimant, consultant, regulator, and Fund staff. The Implementation Plan may be updated periodically by the State Water Board Executive Director or designee, with stakeholder input, based on lessons learned and to improve effectiveness and efficiency of the Pilot Project and the ECAP Program. Changes to the Implementation Plan will be posted on the State Water Board's website and reported in the UST Cleanup Fund Annual Report for the relevant fiscal year.